

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION**

In re:)	Case No. B-10-81038
)	
CLARENCE I. ALLEN, JR. and)	
SHONDAH T. ALLEN,)	
dba ALLEN'S WRENCH, INC.)	
)	Chapter 13
Debtors.)	

***MECHANICS AND FARMERSBANK'S
MOTION FOR RELIEF FROM THE AUTOMATIC STAY***

Pursuant to 11 U.S.C. § 362(d), Mechanics and Farmers Bank (hereinafter referred to as the "Creditor" and/or "Bank") by and through undersigned counsel hereby moves the Court to enter an Order for Relief from the Automatic Stay, in support thereof respectfully states the following:

INTRODUCTION/FACTS

1. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. § 1334 and 11 U.S.C. § 362.
2. Creditor is, and has been at all times mentioned, a North Carolina corporation, organized and authorized to do business pursuant to the laws of the State of North Carolina, and for purposes of this action, having its principal place of business in Durham, North Carolina.
3. Debtors filed a Petition under Chapter 13 of the United States Bankruptcy Court on or about July 15, 2010.
4. Pursuant to the provisions of 11 U.S.C. § 362(a), the filing of Debtor's Petition operated as an Automatic Stay against the Creditor's rights as secured Creditor to proceed against the Debtor and property held by the Debtor as set forth below.

5. That Debtors executed a Note and Deed of Trust, dated June 5, 2006 in the amount of Five Hundred Eighty Two Thousand Five Hundred Dollars (\$582,500.00). That Debtors owe Creditor a total payoff of \$588,286.39 for the property designated as 606 United Drive and 831 Belgreen Road, Durham, NC.
6. That Debtors defaulted under the terms of the Note and Deed of Trust by failing to make the required monthly payments as they came due to Creditor. Pursuant to Debtor's default under the terms of the Note and Deed of Trust, Creditor declared all amounts due and owing under the Note to be immediately payable.
7. On or about July 15, 2010, Debtors filed a Chapter 13 bankruptcy petition in the United States Bankruptcy Court, Middle District of North Carolina, Case No. 10-81038.

GROUND'S FOR RELIEF

8. Creditor seeks relief from the automatic stay under 11 U.S.C. § 362(d) to take possession of the Real Properties. 11 U.S.C. § 362(d) establishes the standard for relief from stay:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay –

- (1) for cause, including the lack of adequate protection of an interest in property of such party in interest;
- (2) with respect to a stay of an act against property under subsection (a) of this section, if -
 - (A) the debtors do not have any equity in such property; and
 - (B) such property is not necessary to an effective reorganization.

9. Subsection (d)(2)(B) is satisfied because the property is not necessary to an effective reorganization, as the Debtors have filed a Chapter 13 bankruptcy case.
10. This motion shall serve as notice to the debtor that the movant will collect reasonable attorney fees and costs as allowed by the Note and Deed of Trust.

NOTICE

Any party opposing this Motion for Relief From the Automatic Stay must timely file and serve an answer at least fifteen (15) days from the date of this Notice pursuant to the Local Bankruptcy Rules for the United States Bankruptcy Court for the Middle District of North Carolina.

WHEREFORE, Mechanics and Farmers Bank ("Creditor") respectfully requests that this Court enter an Order:

- a. Granting Mechanics and Farmers Bank relief from the automatic stay pursuant to §§ 362(d)(1) of the Bankruptcy Code, so that Mechanics and Farmers Bank may exercise its non-bankruptcy state law legal rights and remedies pursuant to the terms of the Note and Deed of Trust including, but not limited to, taking possession of and liquidating the real estate;
- b. As an alternative to the relief prayed for above, grant adequate protection to Mechanics and Farmers Bank for its interest in the property of the debtor(s);
- c. Grant Mechanics and Farmers Bank reasonable costs and attorney fees incurred in connection with this proceeding; and
- d. Grant Mechanics and Farmers Bank such other and further relief as may seem just and proper.

This the 30th day of August, 2010.

/s/ William A. Marsh, Jr., Esquire
WILLIAM A. MARSH, JR., PLLC
NC State Bar #2877
120 E. Parrish Street, Suite 310
Durham, NC 27702
Phone: (919) 688-2374

Attorney for Creditor
Mechanics and Farmers Bank

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on the 26th day of August, 2010, the foregoing MECHANICS AND FARMERS BANK'S MOTION FOR RELIEF FROM THE AUTOMATIC STAY was served upon the parties below by depositing a copy of same in the United States mail, postage prepaid, in an envelope property addressed as follows:

Mr. Clarence I. Allen, Jr.
912 Forge Road
Durham, NC 27713

Shondah Taborn Allen
912 Forge Road
Durham, NC 27713

John T. Orcutt, Esquire
Attorney for Debtors
6616-203 Six Forks Road
Raleigh, NC 27615

Mr. Reid Wilcox
Office of the Chapter 13 Trustee
101 S. Edgeworth Street
Greensboro, NC 27401

This the 30th day of August, 2010.

/s/William A. Marsh, Jr., Esquire
WILLIAM A. MARSH, JR., PLLC
Attorney for Creditor
NC State Bar #2877
120 E. Parrish Street, Suite 310
Durham, NC 27702
Phone: (919) 688-2374

NORTH CAROLINA

CLARENCE I. ALLEN, JR.
SHONDAH T. ALLEN

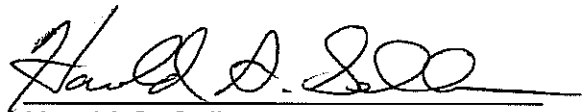
DURHAM COUNTY

CASE NO. 10-81038

AFFIDAVIT

I, Harold G. Sellars, certify that I am Senior Vice President for Mechanics and Farmers Bank; that Mechanics and Farmers Bank is now, and has been the holder of the note and security agreement executed by Allen's Wrench, secured by Deed of Trust and Guaranty Agreement executed by Clarence I. Allen, Jr. and wife, Shondah T. Allen, Grantor, dated June 5, 2006 in the original amount of Five Hundred Eighty Two Thousand Five Hundred Dollars and No Cents (\$582,500.00); and that the fair market value of the real estate is \$1,420,000.00.

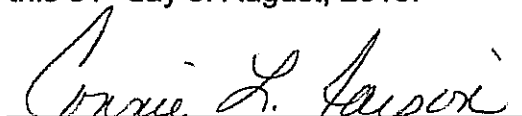
This the 31st day of August, 2010.



Harold G. Sellars
Senior Vice President

Subscribed and sworn to before me

this 31st day of August, 2010.


NOTARY PUBLIC

My Commission Expires: 11-23-2013

(End of Document)